

# **3 FAM 3130 PREMIUM COMPENSATION**

*(TL:PER-364; 02-11-1999)*

## **3 FAM 3131 AUTHORITIES AND PROCEDURES**

*(TL:PER-364; 02-11-1999)*  
*(Uniform State/USAID/USIA/Commerce/Agriculture)*  
*(Applies to Civil Service and Foreign Service Employees)*

*Authorities are authorized by the following:*

- 5 U.S.C. 5541—5550
- 5 U.S.C. 5926
- FPM Letter 550-79
- 5 CFR Part 550
- 5 CFR Part 551 (Fair Labor Standards Act, FLSA)
- Section 412 of the Foreign Service Act of 1980

## **3 FAM 3132 GENERAL RULES**

*(TL:PER-364; 02-11-1999)*  
*(Uniform State/USAID/USIA/Commerce/Agriculture)*  
*(Applies to Civil Service and Foreign Service Employees)*

a. Premium compensation for overtime work is provided under three statutes: *Title 5* of the United States Code (5 U.S.C.), the Fair Labor Standards Act (FLSA), and section 412 of the Foreign Service Act of 1980 (codified at 22 U.S.C. 3972).

b. Premium compensation for night, Sunday, and holiday work is provided under 5 U.S.C. Subchapter V-Premium Pay.

### **3 FAM 3132.1 Hours of Work**

*(TL:PER-290; 9-15-95)*  
*(Uniform State/USAID/USIA/Commerce/Agriculture)*  
*(Applies to Civil Service and Foreign Service Employees)*

In each of the following categories, regulations governing the counting of certain activities as work are published in the listed references.

### **3 FAM 3132.1-1 Training**

*(TL:PER-364; 02-11-1999)*  
*(Uniform State/USAID/USIA/Commerce/Agriculture)*  
*(Applies to Civil Service and Foreign Service Employees)*

*Training is authorized by:*

—5 CFR 410.602

—5 CFR 551.423

### **3 FAM 3132.1-2 Travel**

*(TL:PER-364; 02-11-1999)*  
*(Uniform State/USAID/USIA/Commerce/Agriculture)*  
*(Applies to Civil Service and Foreign Service Employees)*

*Travel is authorized by:*

—5 U.S.C. 5542(b)

—5 CFR 551.422

### **3 FAM 3132.1-3 Sleeping Time**

*(TL:PER-364; 02-11-1999)*  
*(Uniform State/USAID/USIA/Commerce/Agriculture)*  
*(Applies to Civil Service and Foreign Service Employees)*

*Sleeping time is authorized by:*

—5 CFR 551.432

### **3 FAM 3132.1-4 Absence on Court, Military, or Funeral Leave**

*(TL:PER-364; 02-11-1999)*  
*(Uniform State/USAID/USIA/Commerce/Agriculture)*  
*(Applies to Civil Service and Foreign Service Employees)*

*Absence on court, military, or funeral leave is authorized by:*

—5 U.S.C. 6321, 6322, 6323, and 6326

—27 (Comptroller General) CG 353

—49 CG 233

### **3 FAM 3132.2 Experts and Consultants**

*(TL:PER-290; 9-15-95)*

*(Uniform State/USAID/USIA/Commerce/Agriculture)*

*(Applies to Civil Service and Foreign Service Employees)*

Experts and consultants are not entitled to overtime or other premium pay. They receive straight time pay for work on holidays. See:

—(Comptroller General) Comp. Gen. B-131259

—28 CG 727

### **3 FAM 3132.3 Official Time Change**

*(TL:PER-290; 9-15-95)*

*(Uniform State/USAID/USIA/Commerce/Agriculture)*

*(Applies to Civil Service and Foreign Service Employees)*

The impact of an official time change (e.g., from standard time to daylight savings time) on an employee's hours of work are discussed in:

—57 CG 429

—53 CG 292

### **3 FAM 3132.4 Waiver for Overpayments**

*(TL:PER-290; 9-15-95)*

*(Uniform State/USAID/USIA/Commerce/Agriculture)*

*(Applies to Civil Service and Foreign Service Employees)*

The legal and regulatory basis for waiver of overpayments are found in:

—5 U.S.C. 5584

—4 CFR Part a 1

## **3 FAM 3133 OVERTIME**

### **3 FAM 3133.1 General Overtime Provisions**

*(TL:PER-290; 9-15-95)*

*(Uniform State/USAID/USIA/Commerce/Agriculture)*

*(Applies to Civil Service and Foreign Service Employees)*

Regulations governing overtime in general are published in:

—5 CFR 550.111—550.114

### **3 FAM 3133.2 Regular Compensatory Time Off**

*(TL:PER-290; 9-15-95)*

*(Uniform State/USAID/USIA/Commerce/Agriculture)*

*(Applies to Civil Service and Foreign Service Employees)*

Regulations governing regular compensatory time off are published in:

—5 CFR 550.114

—5 CFR 551.531

### **3 FAM 3133.3 Requirement for Regular Compensatory Time Off for Irregular Overtime Work**

*(TL:PER-364; 02-11-1999)*

*(Uniform State/USAID/USIA/Commerce/Agriculture)*

*(Applies to Civil Service and Foreign Service Employees)*

For irregular overtime work scheduled after the beginning of the administrative workweek, eligible Foreign Service and Civil Service employees whose basic annual pay exceeds the maximum rate for GS-10 (i.e., above the salary of GS-10, step 10) shall be granted regular compensatory time off instead of overtime pay. An exception to this policy may be authorized by M/FMP/FO (5 U.S.C. 550.101(b)(17(18))) at the request of an Executive Director for specific units whose personnel are frequently required to perform irregular overtime work.

### **3 FAM 3133.4 Special Compensatory Time Off at Isolated Posts and Certain Other Designated Posts in Foreign Areas**

#### **3 FAM 3133.4-1 Definitions**

*(TL:PER-290; 9-15-95)*

*(Uniform State/USAID/USIA/Commerce/Agriculture)*

*(Applies to Civil Service and Foreign Service Employees)*

Special Compensatory Time Off at Isolated Posts and Certain Other Designated Posts in Foreign Areas means time off from work during the employee's basic workweek for an equal amount of regularly scheduled overtime work at specified foreign posts.

### **3 FAM 3133.4-2 Authority**

*(TL:PER-364; 02-11-1999)*

*(Uniform State/USAID/USIA/Commerce/Agriculture)*

*(Applies to Civil Service and Foreign Service Employees)*

*Authority for Special Compensatory Time Off at Isolated Posts and Certain Other Designated Posts in Foreign Areas is published in:*

—5 U.S.C. 5926

—5 U.S.C. 5921

—Chapter 800 of the Standardized Regulations

### **3 FAM 3133.4-3 Eligibility**

*(TL:PER-290; 9-15-95)*

*(Uniform State/USAID/USIA/Commerce/Agriculture)*

*(Applies to Civil Service and Foreign Service Employees)*

U.S. citizen employees of the foreign affairs agencies officially assigned to positions in foreign areas on a full-time, part-time, or temporary duty status, and receiving basic compensation. This includes ambassadors, Senior Foreign Service members, Foreign Service Officers, and others who are exempt from subchapter V of chapter 55 of title 5 premium pay rules, including regular compensatory time off, as well as those covered by title 5 premium pay rules.

### **3 FAM 3133.4-4 Isolated Post Benefit**

*(TL:PER-290; 9-15-95)*

*(Uniform State/USAID/USIA/Commerce/Agriculture)*

*(Applies to Civil Service and Foreign Service Employees)*

a. "Isolated post" means a post:

(1) That is in a foreign area as defined in 5 U.S.C. 5921(6);

(2) That must operate as a self-contained community in a remote and desolate area where access to alternative sources of social contact is limited by physical barriers of distance and/or restrictions of the post; and

(3) Where some or all functions are required to be maintained on a substantially continuous basis at least 16 hours per day, 7 days a week.

b. The designation of an isolated post must be approved by the Deputy Assistant Secretary for Personnel (DGP/PER) of the Department of State.

c. The principal officer at post or designee may grant special compensatory time off to an employee serving at an isolated post who performs functions required to be maintained at least 16 hours a day, 7 days a week.

d. Time off earned under this section shall be for use only while the employee is assigned to the post where it is earned.

e. Employees eligible for overtime pay under 5 U.S.C. who perform regularly scheduled overtime work under this section may elect in writing to receive compensation at overtime rates under 5 CFR parts 550 and 551 instead of special compensatory time off under this section. This election must be made during the pay period in which the overtime is scheduled and may not later be changed.

### **3 FAM 3133.4-5 Benefit at Other Designated Posts**

*(TL:PER-290; 9-15-95)*

*(Uniform State/USAID/USIA/Commerce/Agriculture)*

*(Applies to Civil Service and Foreign Service Employees)*

a. This section applies to posts in a locality where irregular hours of work are customarily observed, or where other special conditions make it desirable to schedule the workweek on other than the usual five 8-hour days. Such scheduling will permit closer conformity to local practices.

b. The principal officer at post or designee approves the scheduling of workweeks under this provision.

c. Credit for special compensatory time off under this paragraph:

(1) Shall not be converted to overtime pay;

(2) Shall be for use only when the employee is assigned to the post where it is earned;

(3) Must be used during the pay period in which it is earned; and

(4) Shall be forfeited if not used by the time the employee is reassigned to another post.

d. If an employee has unused special compensatory time off credited at the time of departure from post on home leave orders, such compensatory time off may be approved for use during home leave, if authorized by the personnel office of the agency headquarters.

e. If special compensatory time off earned under this paragraph is not taken when scheduled, work performed during the scheduled time-off period may be reported as overtime work for which regular compensatory time off or overtime pay is due if the employee qualifies under 5 CFR chapter 550 or 551; or for Foreign Service Officers such work may be reported as overtime work for which special compensatory time off for FSOs is due.

### **3 FAM 3133.4-6 Exceptions**

*(TL:PER-290; 9-15-95)*

*(Uniform State/USAID/USIA/Commerce/Agriculture)*

*(Applies to Civil Service and Foreign Service Employees)*

The limitation on premium compensation, including compensatory time off, contained in 5 U.S.C. 5547 does not apply to Special Compensatory Time Off provided under paragraphs (d) or (e) above.

### **3 FAM 3133.5 Special Compensatory Time Off for Foreign Service Officers**

*(TL:PER-290; 9-15-95)*

*(Uniform State/USAID/USIA/Commerce/Agriculture)*

*(Applies to Foreign Service Employees)*

a. Special compensatory time off for Foreign Service Officers is authorized by 22 U.S.C. 3972 (section 412(c) of the Foreign Service Act of 1980, as amended).

b. Special compensatory time off for Foreign Service officers:

(1) Is time off from work during the basic workweek in exchange for performing an equal amount of overtime work or holiday work that is officially ordered or approved in writing by an authorizing official; and

(2) Will be forfeited without any other kind of compensation if not used during the 26 weeks following the pay period in which it was earned.

c. FSOs who are authorized the special differential for regular overtime work in substantial excess of normal hours under section 3 FAM 3139 or who are entitled to compensation for overtime work under FLSA are not eligible for special compensatory time off under this section.

d. Special compensatory time off for FSOs may not be granted in exchange for overtime work that has been credited with another type of special compensatory time off.

e. Special compensatory time off for FSOs may not be granted for any overtime or holiday work which, if it were compensable under title 5 premium pay rules, would cause an officer's aggregate biweekly rate of pay to exceed the maximum biweekly payable rate of basic pay for GS-15.

### **3 FAM 3133.6 Special Compensatory Time Off for Religious Observances**

#### **3 FAM 3133.6-1 Authority**

*(TL:PER-290; 9-15-95)*

*(Uniform State/USAID/USIA/Commerce/Agriculture)*

*(Applies to Civil Service and Foreign Service Employees)*

*Authority for Special Compensatory Time Off for Religious Observances is published in:*

—5 U.S.C. 5550(a)

—5 CFR 550.1001—1002

#### **3 FAM 3133.6-2 Eligibility**

*(TL:PER-290; 9-15-95)*

*(Uniform State/USAID/USIA/Commerce/Agriculture)*

*(Applies to Civil Service and Foreign Service Employees)*

All employees of the foreign affairs agencies except Foreign Service National employees, America employees compensated under section 408(a) of the Foreign Service Act of 1980, and consular agents.

### **3 FAM 3134 PAY FOR HOLIDAY WORK**

*(TL:PER-364; 02-11-1999)*

*(Uniform State/USAID/USIA/Commerce/Agriculture)*

*(Applies to Civil Service and Foreign Service Employees)*

a. The legal and regulatory provisions governing pay for holiday work are published in:

—5 U.S.C. 5546

—5 CFR 550.131—550.132

—5 CFR Part 610, Subpart B

—50 CG 519

—Comp. Gen. B-194035, June 18, 1979

b. Holiday premium pay does not apply to work performed on local holidays.

### **3 FAM 3135 NIGHT PAY DIFFERENTIAL**

*(TL:PER-290; 9-15-95)*  
*(Uniform State/USAID/USIA/Commerce/Agriculture)*  
*(Applies to Civil Service and Foreign Service Employees)*

Night pay differential is governed by regulations published in 5 CFR 550.121—550.122.

### **3 FAM 3136 SUNDAY PREMIUM PAY**

*(TL:PER-290; 9-15-95)*  
*(Uniform State/USAID/USIA/Commerce/Agriculture)*  
*(Applies to Civil Service and Foreign Service Employees)*

a. Sunday premium pay is governed by regulations published in:

—5 U.S.C. 5546

—5 CFR 550.171

—Comp. Gen. B-189040, July 7, 1978

—Armitage, et al. v. United States (Fed. Cir. 92-5157, April 12, 1993)

b. Only full-time employees are eligible to receive Sunday Premium Pay (46 Comp. Gen. 337, 1966)

### **3 FAM 3137 ON-CALL STATUS**

#### **3 FAM 3137.1 General**

*(TL:PER-290; 9-15-95)*  
*(Uniform State/USAID/USIA/Commerce/Agriculture)*  
*(Applies to Civil Service and Foreign Service Employees)*

On-call status is a requirement to be available to return to duty on short notice during off-duty hours. Employees must be available by telephone, electronic beeper, or similar device and, if so ordered, return within 1 hour to the office or duty station to perform urgent work.

### **3 FAM 3137.2 Compensation**

*(TL:PER-290; 9-15-95)*

*(Uniform State/USAID/USIA/Commerce/Agriculture)*

*(Applies to Civil Service and Foreign Service Employees)*

There is no entitlement to premium or other extra compensation for on-call status when no work is performed. An authorizing officer (the principal officer at post, executive director of a bureau, or their designee) shall request volunteers for on-call availability. Management will not impose any restraint or coercion on employees who decline to volunteer. In the absence of sufficient volunteers, the authorizing officer may assign on-call status on a rotating basis among employees with the requisite skills.

### **3 FAM 3138 PREMIUM PAY ON AN ANNUAL BASIS**

#### **3 FAM 3138.1 Authority**

*(TL:PER-364; 02-11-1999)*

*(Uniform State/USAID/USIA/Commerce/Agriculture)*

*(Applies to Civil Service and Foreign Service Employees)*

*Authority on Premium Pay on an Annual Basis is published in:*

Regularly Scheduled Standby Duty	5 CFR 550.141—144
Administratively Uncontrollable Work	5 CFR 550.151—154
General	5 CFR 550.161—164 5 U.S.C. 5545

#### **3 FAM 3138.2 Regularly Scheduled Standby Duty**

##### **3 FAM 3138.2-1 Eligibility**

*(TL:PER-364; 02-11-1999)*

*(Uniform State/USAID/USIA/Commerce/Agriculture)*

*(Applies to Civil Service and Foreign Service Employees)*

a. Full-time U.S. citizen members of the Service in State, USAID, USIA, and Commerce assigned abroad are eligible.

b. FSO's, FSO career candidates, and medical officers eligible under 3 FAM 3290 are not eligible.

### **3 FAM 3138.2-2 Definition**

*(TL:PER-290; 9-15-95)*

*(Uniform State/USAID/USIA/Commerce/Agriculture)*

*(Applies to Civil Service and Foreign Service Employees)*

Regularly scheduled standby duty is a requirement for standby status on a fixed schedule in addition to the basic 40-hour workweek over a 3-month cycle.

### **3 FAM 3138.2-3 General**

*(TL:PER-364; 02-11-1999)*

*(Uniform State/USAID/USIA/Commerce/Agriculture)*

*(Applies to Civil Service and Foreign Service Employees)*

a. Standby duty pay is provided in accordance with regulations at 5 CFR 550.141—144.

b. To receive standby duty pay, employees must:

(1) Be eligible for premium pay in accordance with 3 FAM 3133.3 and 3 FAM 3138.2(a) above;

(2) Occupy positions that have been designated by the executive director of the appropriate regional bureau as meeting the criteria in 5 CFR 550.141; and

(3) Be certified for receipt of standby duty pay by the principal officer at post or designee.

c. Eligible members assigned on a TDY basis to positions designated for standby duty pay are eligible to receive standby duty pay.

d. Eligible members with the same specialization at a post will not be scheduled for standby duty simultaneously to perform the same function except in extraordinary circumstances.

### **3 FAM 3138.2-4 Effective Dates**

*(TL:PER-290; 9-15-95)*

*(Uniform State/USAID/USIA/Commerce/Agriculture)*

*(Applies to Civil Service and Foreign Service Employees)*

a. Entitlement begins on the date that an eligible member begins duty for basic pay purposes in a designated position.

b. Entitlement ends on the date that an eligible member ceases duty for basic pay purposes in a designated position.

### **3 FAM 3138.3 Administratively Uncontrollable Work**

*(TL:PER-290; 9-15-95)*

*(Uniform State/USAID/USIA/Commerce/Agriculture)*

*(Applies to Civil Service and Foreign Service Employees)*

a. Premium pay for administratively uncontrollable work (AUO) is provided in accordance with regulations at 5 CFR 550.151—154.

b. AUO may be authorized for substantial amounts of irregular overtime work to eligible employees in positions in which the hours of duty cannot be controlled administratively.

c. The employee must be generally responsible for recognizing, without supervision, circumstances that require the employee to remain on duty.

d. Pay is authorized for a particular office or post under procedures approved by the Director General of the Foreign Service.

### **3 FAM 3138.4 Law Enforcement Availability Pay**

*(TL:PER-364; 02-11-1999)*

*(Uniform State/USAID/USIA/Commerce/Agriculture)*

*(Applies to Civil Service and Foreign Service Employees)*

Law enforcement availability pay (LEAP) is provided in accordance with 5 U.S.C. 5545(a) and the regulations in 5 CFR 550.181—550.187. *LEAP for special agents in the Diplomatic Security Service is provided in accordance with 3 FAM 3155.*

## **3 FAM 3139 SPECIAL DIFFERENTIAL FOR SUBSTANTIAL AMOUNTS OF EXTRA WORK**

### **3 FAM 3139.1 Authority**

*(TL:PER-364; 02-11-1999)*

*(Uniform State/USIA/Commerce/Agriculture)*

*(Applies to Civil Service and Foreign Service Employees)*

*Authority for Special Differential for Substantial Amounts of Extra Work is published in:*

—22 U.S.C. 3972 (section 412 of the Foreign Service Act of 1980, as amended)

—67 CG 351

### **3 FAM 3139.2 Who is Covered**

*(TL:PER-290; 9-15-95)*

*(Uniform State/USIA/Commerce/Agriculture)*

*(Applies to Civil Service and Foreign Service Employees)*

Commissioned Foreign Service Officers (FSOs) in classes FO-02 through FO-06 who:

- (1) Are serving in covered positions, and
- (2) Are required by their supervisors to perform additional work on a regular continuing basis in substantial excess of normal requirements.

### **3 FAM 3139.3 Limitations**

*(TL:PER-364; 02-11-1999)*

*(Uniform State/USAID/USIA/Commerce/Agriculture)*

*(Applies to Civil Service and Foreign Service Employees)*

a. The number of positions that will be certified for special differential at any one time is limited to:

- (1) Approximately 100 at the Department;
- (2) 14 at the Multinational Force Organization (12 for the State contingent and 2 for USIA); and
- (3) 30 at USIA.

b. FSOs in class FO-01 and members of the Senior Foreign Service are ineligible under this section.

c. FSOs of any class working in the immediate office of principal officers in the Department, United States Information Agency (USIA), or the Agency for International Development (USAID) paid at Executive Levels I, II, or III are ineligible. Chiefs of Mission are not principal officers within the meaning of this section.

d. FSOs of any class eligible to receive overtime compensation under FLSA are ineligible.

e. FSOs receiving special differential can earn special compensatory time off under 3 FAM 3133.3 only for hours worked in excess of the minimum hours under 3 FAM 3139.4 a and b as applicable.

### **3 FAM 3139.4 Criteria for Determining Covered Positions**

*(TL:PER-364; 02-11-1999)*

*(Uniform State/USIA/Commerce/Agriculture)*

*(Applies to Civil Service and Foreign Service Employees)*

The minimum requirements for position coverage are:

- (1) An average of at least 55 hours of work per week for a period of 6 consecutive months;
- (2) Work performed for a period of 6 consecutive months on a rotational 24-hour shift basis, including evenings, Sundays, and holidays, or State only: work performed on a rotational duty schedule combining 16-hour shift coverage in the Department with 24-hour shift coverage abroad (end State only), and an average of at least 45 hours per week; or
- (3) Work performed for a period of 6 consecutive months on a shift basis with over 50 percent of the hours scheduled on workdays between 6:00 p.m. and 6:00 a.m., or on Sundays and holidays.

### **3 FAM 3139.5 Rates**

*(TL:PER-364; 02-11-1999)*

*(Uniform State/USAID/USIA/Commerce/Agriculture)*

*(Applies to Civil Service and Foreign Service Employees)*

Special differential is paid as a percentage of basic compensation earned during a pay period. The rates that apply for covered positions under the categories listed in 3 FAM 3139.4 are as follows:

- Category a: 18 percent
- Category b: 13 percent
- Category c: 10 percent

### **3 FAM 3139.6 Certification and Effective Dates**

*(TL:PER-290; 9-15-95)*

*(Uniform State/USIA/Commerce/Agriculture)*

*(Applies to Civil Service and Foreign Service Employees)*

- a. New positions will be certified for coverage effective the first day of the first full pay period on or after April 1 or October 1.
- b. Positions already certified will be reviewed at 6-month intervals for recertification effective the first day of the first full pay period on or after April 1 and October 1.

c. Payments are effective on the first day of the first full pay period after an eligible member is assigned to a certified position.

d. Payments terminate on the first day of the first full pay period after:

- (1) A member departs for reassignment to another position;
- (2) A member is promoted to FO-01; or
- (3) A position is decertified.

e. Payments will be suspended or forfeited when a member is absent:

- (1) On leave for vacation or for reasons of emergency or illness for more than 21 calendar days; or
- (2) On temporary duty for more than 21 calendar days.

### **3 FAM 3139.7 Relationship to Other Payments**

*(TL:PER-290; 9-15-95)*

*(Uniform State/USIA/Commerce/Agriculture)*

*(Applies to Civil Service and Foreign Service Employees)*

The special differential is:

- (1) Taxable income for Federal, state, and other U.S. locality purposes;
- (2) Not used for retirement or Thrift Savings Plan (TSP) purposes;
- (3) Is included in the lump-sum annual leave payment (CF. 67 CG351); and
- (4) Is not subject to the limitations in section 552 of the Standardized Regulations or 5 U.S.C. 5547.